

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 18 CVS 014001

COMMON CAUSE; *et al.*

Plaintiffs,

v.

DAVID R. LEWIS, *et al.*

Defendants.

)
)
) **LEGISLATIVE DEFENDANTS'**
) **RESPONSE TO MOTION IN LIMINE**
) **TO PRECLUDE LEGISLATIVE**
) **DEFENDANTS FROM**
) **INTRODUCING EVIDENCE OR**
) **TESTIMONY UNDER THE SWORD**
) **AND SHIELD DOCTRINE**
)
)
)

Plaintiffs' motion regarding the sword and shield doctrine is breathtakingly overbroad and should be denied.

Plaintiffs seek to bar any legislator from testifying or offering any evidence at trial regardless of whether the legislator asserted legislative privilege. This is despite the fact that well before the discovery period expired, legislative defendants disclosed numerous legislators with knowledge of the redistricting process, criteria, and districts drawn and enacted in 2017. None of those legislators has asserted legislative privilege; indeed, despite having this information for months, plaintiffs never attempted to subpoena or depose them. Plaintiffs should not now be able to hide facts known by these legislators from the court.

FACTUAL BACKGROUND

On January 24, 2019, plaintiffs served numerous deposition notices and/or subpoenas for the legislative defendants and others covered by legislative privilege. These notices and subpoenas were limited to the following: Rep. Lewis, Sen. Hise, Speaker Moore, Sen. Berger, Sen. Wade, Sen. Meredith, Sen. Alexander, Sen. Bishop, former Sen. Rucho, former Rep. Dollar, Mark Coggins, and Jim Blaine.

On February 4, 2019, legislative defendants served a motion for protective order regarding the deposition notices issued by plaintiffs. The non-parties also served objections to the deposition and document subpoenas on the same day.

After the motion for protective order was served, the parties thereafter began discussions and negotiations regarding a resolution to the privilege issue. While the parties were discussing the legislative privilege issue, plaintiffs filed their first motion to compel on February 19, 2019. Plaintiffs allowed the motion to sit in the court file for nearly a month before taking appropriate action to have it heard by the court.

On March 25, 2019, the court entered an order granting plaintiffs' first motion to compel in part. Part of the order required supplementation of certain interrogatory answers by April 3, 2019.

Legislative defendants complied with the order. As pertinent here, on April 3, 2019, legislative defendants supplemented their answer to Interrogatory No. 1, which sought the identification of persons who were involved in the "drawing or revising [of] district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans." See Legislative Defendants' Second Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories (4/3/19), attached as Exhibit A.

The supplemental response stated:

In addition, the State Senate and State House redistricting committee members were involved in the redistricting, including specifically the Republican members of each committee. The Republican members of the State Senate committee were: Sen. Ralph Hise, Chairman, Sen. Dan Bishop, Sen. Harry Brown,

Sen. Warren Daniel, Sen. Kathy Harrington, Sen. Brent Jackson, Sen. Michael V. Lee, Sen. Paul Newton, Sen. Bill Rabon, and Sen. Trudy Wade.

The Republican members of the State House committee were: Rep. David Lewis, Senior Chairman, Rep. Nelson Dollar, Chairman, Rep. John Bell, Vice Chairman, Rep. Sarah Stevens, Vice Chairman, Rep. John Szoka, Vice Chairman, Rep. Jon Torbett, Vice Chairman, Rep. Bill Brawley, Rep. Justin Burr, Rep. Ted Davis, Rep. Jimmy Dixon, Rep. Josh Dobson, Rep. Andy Dulin, Rep. Holly Grange, Rep. Destin Hall, Rep. Jon Hardister, Rep. Kelly Hastings, Rep. Julia Howard, Rep. Pat Hurley, Rep. Linda Johnson, Rep. Bert Jones, Rep. Jonathan Jordan, Rep. Chris Malone, Rep. David Rogers, Rep. Jason Saine, and Rep. Michael Speciale.

The Republican members of the State House and State Senate redistricting committees *have knowledge of the redistricting process, criteria, and districts drawn and enacted in 2017.*

Ex. A. at 4-5 (emphasis added).

Plaintiffs did not seek to subpoena or depose any of the individuals identified in legislative defendants' supplemental response. The deadline for written discovery expired on April 17, 2019 and the deadline for fact witness discovery expired May 17, 2019.

ARGUMENT

Plaintiffs' motion is overbroad and rests on a factually incorrect proposition.¹ Plaintiffs claim that the twelve individuals who asserted legislative privilege in February

¹ Legislative defendants do not intend to offer any evidence, directly or indirectly, from the individuals who were the subject of the February protective order motion. However, legislative

2019 were identified by legislative defendants as the “sole living persons who had any involvement in drawing the state House and state Senate districts in 2017.” Motion at 6. That is demonstrably false. On April 3, 2019, legislative defendants identified at least 30 additional persons who were involved in the 2017 redistricting. Legislative defendants also explicitly described their knowledge as of “the redistricting process, criteria, and districts drawn and enacted in 2017.”

Thus, as of April 3, 2019, plaintiffs were on notice of additional individuals they should seek to depose or subpoena in order to obtain all facts known by relevant legislators about the 2017 redistricting. Plaintiffs failed to do so. It would be manifestly unjust for the legislative defendants to be barred from offering facts about the relevant redistricting plans from legislators who have never been subpoenaed and, more importantly, have never asserted legislative privilege in this matter. These persons, having not invoked the shield of the privilege, may not now be barred from testifying through plaintiffs’ use of this motion as a sword against them.

CONCLUSION

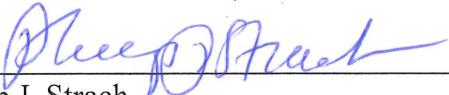
For the foregoing reasons, plaintiffs’ motion regarding the sword and shield doctrine should be denied.

defendants reserve the right to seek leave to call such individuals as witnesses at trial to the extent necessary to defend legislative defendants against any baseless accusations allowed at trial that are related to the files produced by Stephanie Hofeller Lizon.

This the 1st day of July, 2019.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

- ☐ Hand delivering a copy hereof to each said party or to the attorney thereof;
- ☐ Transmitting a copy hereof to each said party via facsimile transmittal;
- ☒ By email transmittal;
- ☐ Depositing a copy here of, first class postage pre-paid in the United States mail, properly addressed to:

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This the 1st day of July, 2019.


Phillip Strach, NC Bar No. 29456

Exhibit A

**OGLETREE, DEAKINS, NASH,
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April 3, 2019

**Via U.S. Mail &
Via Email (stanton.jones@arnoldporter.com)**

R. Stanton Jones
Arnold & Porter
601 Massachusetts Ave., NW
Washington, DC 20001

RE: *Common Cause, et al. v. David R. Lewis, et al.*
Wake County Superior Court Case No.: 18-cvs-014001

Dear Stanton:

Enclosed please find legislative defendants' supplemental interrogatory responses.

By separate email communication, we will send a link to part of the document production. For the production provided at that link, legislative defendants searched the terms "redistricting" OR "redistrict" OR "criteria" OR "precinct" OR "VTD" OR "compact" IR "compactness" between July 1, 2017 and August 31, 2017 across the following custodians: Phil Berger, and staff members Amy Auth, Jim Blaine, Shelley Carver, Peggy Halifax, Darrell Malcom, Stephen Ogden, Tom Reeder, Sara R. Ulm, Wanda Shivers, Erica Srader, Will Timlinson, Andrew Tripp, Kolt Ulm, Dulan Watts, Interns, Graham Whitaker; Tim Moore, and staff members Leah Burns, Britt Eller, Nelson Freeman, Mitch Gillespie, Bart Goodson, Lewis King, Joseph Kyzer, Julie Lisella; Nelson Dollar and staff member Candace Slate; David Lewis and staff members Grace Rogers, Mark Coggins, Lewisin, Neal Inman; Ralph Hise and staff members Susan Fanning, Hisein, Hisein2, HSE RedistrictLA, SEN RedistrictLA. Legislative defendants also searched terms "legislative districts redraw" from January 1, 2015 for the same custodians and no results were found. No document in this production came from a non-custodial data source. The legislative defendants are not in possession of any electronic communications outside of these custodial sources that are responsive to the document requests.

For documents regarding the enactment of the 2011 plans, we have produced the documents and files that were produced regarding the 2011 plans in the Dickson v. Rucho matter. This production is being served via overnight delivery and is included on electronic drives. The only way to ensure a

R. Stanton Jones
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complete production regarding the 2011 plans was to re-produce the files produced by the defendants in the Dickson matter. As you know, local counsel for the plaintiffs in this matter was also counsel for the plaintiffs in the Dickson matter and should have a complete copy of the Dickson production. If you believe that we have not included some aspect of the Dickson production here please let us know. For instance, we were not able to reproduce the Dickson production that included some of the electronic files of Joel Raupe because the CD containing that production had denigrated over time to the point that it could not be copied. To our knowledge, no other parts of the Dickson production were so compromised.

Sincerely,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/ Phillip J. Strach

Phillip J. Strach

PJS:erd

Encl.

38029315.1

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 18 CVS 014001

Defendants.

Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy K. Moore, and President Pro Tempore of the North Carolina Senate, Philip E. Berger (“Defendants” or “legislative defendants”), by and through undersigned counsel, serve their supplemental objections and responses to Plaintiffs' First Set of Interrogatories as follows:

Defendants make the following second set of supplemental answers, responses, and objections to Plaintiffs' First Set of Interrogatories ("Interrogatories"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such, and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as a waiver by Defendants of any part of any objection to any Interrogatory. Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

INTERROGATORIES

1. Identify each person who, to your knowledge, had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, information protected by legislative privilege, and information that constitutes work product. Defendants also object to this interrogatory in that “involvement” is vague.

Without waiving these objections, the 2017 plans were drawn by Dr. Thomas Hofeller, under the direction of Representative David Lewis and Senator Ralph Hise. Representative Lewis and Senator Hise were responsible for developing and proposing the criteria adopted by the Redistricting Committees that were used by Dr. Hofeller to draw the 2017 plans. Representative Nelson Dollar had input revising the 2017 House Plan, and Senators Bishop, Meredith, Wade, and Alexander were consulted on some revisions to the 2017 Senate Plan. In addition, all members of the General Assembly had opportunities to

revise the plans through amendments during the legislative process and members of the public had access to publicly available computer terminals to draft plans. Moreover, the General Assembly authorized the minority caucus to retain consultants to assist with mapdrawing and Defendants believe that one or more consultants was so retained, including Kareem Crayton.

In addition, see Defendants' responses to Plaintiffs' Third Set of Interrogatories.

April 3, 2018 Supplemental Response: In addition, the State Senate and State House redistricting committee members were involved in the redistricting, including specifically the Republican members of each committee. The Republican members of the State Senate committee were: Sen. Ralph Hise, Chairman, Sen. Dan Bishop, Sen. Harry Brown, Sen. Warren Daniel, Sen. Kathy Harrington, Sen. Brent Jackson, Sen. Michael V. Lee, Sen. Paul Newton, Sen. Bill Rabon, and Sen. Trudy Wade.

The Republican members of the State House committee were: Rep. David Lewis, Senior Chairman, Rep. Nelson Dollar, Chairman, Rep. John Bell, Vice Chairman, Rep. Sarah Stevens, Vice Chairman, Rep. John Szoka, Vice Chairman, Rep. Jon Torbett, Vice Chairman, Rep. Bill Brawley, Rep. Justin Burr, Rep. Ted Davis, Rep. Jimmy Dixon, Rep. Josh Dobson, Rep. Andy Dulin, Rep. Holly Grange, Rep. Destin Hall, Rep. Jon Hardister, Rep. Kelly Hastings, Rep. Julia Howard, Rep. Pat Hurley, Rep. Linda Johnson, Rep. Bert Jones, Rep. Jonathan Jordan, Rep. Chris Malone, Rep. David Rogers, Rep. Jason Saine, and Rep. Michael Speciale.

The Republican members of the State House and State Senate redistricting committees have knowledge of the redistricting process, criteria, and districts drawn and enacted in 2017.

Non-lawyer legislative staff involved in the redistricting to the best of legislative defendants' knowledge would have been Jim Blaine and Mark Coggins, each of whom would have assisted with information and drafting requests by legislators, including the legislative defendants, as well as planning and logistics of the legislative process that led to the enactment of the plans.

Legal legislative staff for the legislative defendants involved in the redistricting to the best of legislative defendants' knowledge would have been Andrew Tripp, Julie Bradburn, Brent Woodcox, Bart Goodson, and Neal Inman, each of whom would have assisted in providing legal advice regarding the 2017 plans and the legislative process that led to the enactment of the plans.

2. For each person identified in response to Interrogatory 1, describe that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: See response to Interrogatory No. 1 and to Plaintiffs' Third Set of Interrogatories.

3. For each person identified in response to Interrogatories 1 and 2, provide the name of any entity with which each such person was affiliated at the time of that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Defendants object to Interrogatory 3 on the grounds that “entity with which each such person was affiliated” is both unduly vague and overbroad since the persons in question may have been affiliated with various entities that had nothing to do with redistricting.

In addition, see Defendants’ responses to Plaintiffs’ Third Set of Interrogatories.

April 3, 2018 Supplemental Response: Each person identified by legislative defendants is a legislator or otherwise employed by and affiliated with the North Carolina General Assembly.

4. For each person identified in response to Interrogatories 1 and 2, provide the name of the entity or entities that paid that person's fees or expenses for his or her work in drawing or revising district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Representatives Lewis and Dollar and Senator Hise were not paid any fees for their involvement with the 2017 plans. Dr. Hofeller's fees were paid by the North Carolina General Assembly as he worked as a consultant to Representative Lewis and Senator Hise. Defendants also believe that the fees of the consultant retained by the minority caucus, Kareem Crayton, were paid by the General Assembly.

April 3, 2018 Supplemental Response: None of the individuals identified by legislative defendants were paid except by the General Assembly.

5. Identify each person or entity with whom you communicated before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Representative Lewis and Senator Hise consulted with legal counsel (specifically counsel of record in the *Covington* matter) during the 2017 redistricting process. Both of them also likely consulted with members of the General Assembly and the public.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

April 3, 2018 Supplemental Response: Legal counsel of record from the Covington matter with whom legislative defendants consulted during the 2017 redistricting process were Tom Farr and Phil Strach. To the best of their knowledge, information, and belief, legislative defendants did not communicate with any “entity” prior to August 10, 2017 regarding the drawing, revising, or criteria for the 2017 plans. To the best of their knowledge, information, and belief, the persons with whom legislative defendants communicated regarding the 2017 plans were disclosed in the response to Interrogatory No. 1.

6. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans before August 10, 2017.

RESPONSE: To the best recollection of Defendants, no drafts of the 2017 plans existed prior to August 10, 2017. At LDNC000286, Senator Erica Smith-Ingram clarifies that no new maps had been drawn prior to August 10, 2017.

7. Identify each person or entity with whom you communicated, between August 10, 2017 and August 21, 2017, regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans.

RESPONSE: See objections and response to Interrogatory No. 5.

In addition, legislative defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

In addition to the individuals identified herein in response to Interrogatory 1, the legislative defendants discussed this matter by email correspondence with numerous constituents, which email correspondence has been provided to Plaintiffs. All other email or other communications have been provided to Plaintiffs in response to the Requests for Production of Documents. Legislative defendants are aware of no other communications responsive to Interrogatory No. 7.

8. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10, 2017 and August 21, 2017.

RESPONSE: To the best recollection of the defendants, it is likely that Representative Lewis, Representative Dollar, Senator Hise, Jim Blaine, and Mark Coggins viewed all or part of the 2017 plans between August 10, 2017 and August 21, 2017. In addition, the draft 2017 plans were released publicly on August 19, 2017 and accordingly available to every member of the public.

Also, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

Counsel of record for legislative defendants in *Covington* also likely viewed draft maps for purposes of providing legal advice.

9. Identify and describe all computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. For each, identify and describe the owner of the computer, software, program, application, or statistic package and who paid for it.

RESPONSE: To the knowledge of the defendants, the 2017 plans were drawn on a computer owned by the General Assembly. Dr. Hofeller used the Maptitude software program to draw the plans. A license for this program was also purchased by the General Assembly. All information on any computer used to draw the 2017 plans by Dr. Hofeller that is in the possession, custody, or control of the General Assembly has been provided to Plaintiffs.

10. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: The criteria used to draw the 2017 plans is the criteria adopted by the Redistricting Committees, is a matter of public record, and has already been provided to Plaintiffs' counsel and can be found at LDNC000302.

11. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the 2017 Plans, including but not limited to the 2017 Plans Criteria, were prioritized or weighted in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: All constitutionally required criteria had priority over all other criteria including equal population between districts, the *Stephenson* county grouping formula, and the requirement of contiguity. Other factors were considered only when the consideration of such criteria did not conflict with constitutional criteria and could be harmonized with the other criteria. Use of election data was not the predominant criterion used to draft the 2017 plans.

12. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

RESPONSE: Defendants object to this interrogatory on the grounds that “formulas or algorithms” are vague. Defendants are not aware of any “formulas or algorithms” used to draw the plans. After the plans were developed, reports were prepared showing election results in each district for certain statewide elections. These reports are part of the public record and have already been produced to Plaintiffs’ counsel.

In addition, Dr. Hofeller may have used election results in addition to the other criteria in drawing the Plans. To the best of Defendants’ memory, the Maptitude software used by Dr. Hofeller contained the ability to calculate the average percentage vote of ten statewide elections for districts.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of any “formulas or algorithms” other than what has been previously disclosed in their responses to this Interrogatory. The record at LDNC000138 indicates that Maptitude had the ability to apply 9 different tests to determine compactness. Those tests included: the Reock test, the Schwartzberg test, the Perimeter test, the Polsby-Popper test, the Length-Width test, the Population Polygon test, the Minimum Convex Polygon test, the Population Circle test and the Ehrenburg test. Maptitude may have included other tests, formulas, or algorithms, but legislative defendants do not recall. In addition, legislative defendants affirm and adopt the following testimony by witnesses in the Dickson and Covington cases:

DEPOSITION OF SENATOR ROBERT RUCHO (DICKSON V. RUCHO

5/4/12):

26:7-31:2

33:4-11

37:7-14

41:7-42:13

43:15-46:4

48:19-54:18

54:19-55:16

55:22-68:16

68:21-71:14

71:15-72:14

92:25-109:10

116:21-117:20

121:7-126:3

137:13-143:25

145:18-148:8

158:13-159:12

170:8-174:8

190:13-194:3

DEPOSITION OF REPRESENTATIVE DAVID LEWIS (DICKSON V. RUCHO

5/3/12)

28:22-30:9

39:17-43:04; 44:8-50:15

62:8-23

71:16-72:11; 73:2-76:13

78:1-81:21

82:22-83:8

87:15-23

90:18-24

92:8-15; 98:19-99:3

103:5-104:4

105:15-22

107:18-24

108:3-23; 110:16-115:10; 116:5-22; 125:7-133:21; 139:20-146:20

152:15-153:2

153:11-164:12; 165:9-165:10

194:1-9

195:14-201:3; 209:14-19

215:25-216:16

DEPOSITIONS OF DR. THOMAS HOFELLER TAKEN ON 6-28-12 and 8-10-12

(Dickson)

Vol I

41:21-45:12

47:14-53:09

55:01-58:25

Vol. II

196:21-219:19

266:22-269:01

272:03-273:03

273:04-351:04

357:16-360:15

361:24-363:16

364:06-364:24

365:04-366:12

DEPOSITION OF SENATOR ROBERT RUCHO (COVINGTON V. NORTH CAROLINA 2/8/16)

8:23-10:13

11:13-17:10

18:1-19:20

20:17-22:15

DEPOSITION OF DAVID LEWIS (COVINGTON V. NORTH CAROLINA 2/5/16)

9:5-21

10:25-11:9

29:20-30:22

31:23-32:18

33:4-22

36:13-21

43:2-8

44:6-10

46:24-47:16

48:19-50:2

DEPOSITION OF DR. THOMAS HOFELLER (COVINGTON V. NORTH CAROLINA 2/16/16)

11:5-15:18

16:13-18:11

22:21-23:15

25:15-26:20

34:7-38:14

41:24-45:25

56:19-57:11

63:17-65:16; 65:19-67:23

68:1-72:23

73:2-10

13. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Defendants object to this interrogatory on the grounds that “partisanship scores or estimates” are vague. Without waiving this objection, see response to Interrogatory Nos. 10, 11, and 12.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of any “formulas or algorithms” other than what has been previously disclosed in their responses to this Interrogatory. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases referenced in the response to Interrogatory No. 12.

14. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: In 2017, the legislature did not change districts in 2011 county groups that did not have to be changed because of the impact of a district declared illegal in the *Covington* case.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of the criteria other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the *Dickson* and *Covington* cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the *Dickson* and *Covington* cases set forth in the response to Interrogatory No. 12.

15. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the for the 2011 Unchanged Districts were prioritized or weighted in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: See response to Interrogatory No. 14.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of the prioritization of the criteria other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the response to Interrogatory No. 12.

16. Identify and describe all elections data and other measures of partisanship that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: See response to Interrogatory No. 14.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of “elections data and other measures of partisanship” other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the response to Interrogatory No. 12.

17. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2011 Unchanged Districts, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

RESPONSE: See response to Interrogatory No. 16.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of “elections data and other measures of partisanship” other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the response to Interrogatory No. 12.

18. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: Defendants object to this interrogatory on the grounds that “partisanship scores or estimates” are vague. Without waiving this objection, see response to Interrogatory No. 16.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of “partisanship scores or estimates for precincts or voting districts” other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the supplemental response to Interrogatory No. 12.

Respectfully submitted this the 3rd day of April, 2019.

OGLETREE, DEAKINS, NASH,
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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing document to be served on all counsel of record by electronic mail in accordance with the agreement of the parties to serve documents in this matter electronically.

This the 3rd day of April, 2019.

By: /s/Phillip J. Strach
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